

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

RANDY PLEW, MARC ROTH, RICH PRESSER, and MARCIA PRESSER, Petitioners,)	Administrative Cause Number: 17-054W
)	
vs.)	
)	PL-23034
EPWORTH FOREST ADMINISTRATION COMMITTEE, INC. and DEPARTMENT OF NATURAL RESOURCES, Respondents.)	
)	

ORDER DENYING MOTION TO STAY PROCEEDINGS

On October 23, 2017, Respondent, Epworth Forest Administration Committee (*EFAC*), by Counsel, Matthew R. Shipman, filed its motion to stay the instant proceeding pending the outcome of a cause of action for declaratory relief identified as *Kokomo Grace United Methodist Church, Inc. v. Epworth Forest Administration Committee, Inc.*, Cause Number 43C01-1710-PL-000105, pending in the Kosciusko Circuit Court (*Declaratory Relief Cause*).

On November 5, 2017, the Petitioners, Randy Plew, Marc Roth, Rich Presser and Marcia Presser, by Counsel Michael M. Yoder, filed their objection to the Respondent's motion to stay the proceedings.

Having reviewed and considered the parties' pleadings, the Administrative Law Judge (*ALJ*) determines as follows.

Preclusion of Inconsistent Judgments

In its motion, EFAC states that one benefit of staying the instant proceeding is to "preclude inconsistent judgments from the Natural Resources Commission and the Kosciusko Court..." From a review of the complaint for declaratory relief pending before the Kosciusko Circuit Court the sole issue in that cause relates to EFAC's ability to maintain a currently existing group pier at its historical location on shoreline owned by Kokomo Grace Church, Inc. At issue in this proceeding is a permit, issued to EFAC by the Department of Natural Resources (*Department*) that authorizes the construction and maintenance of a group pier on EFAC's property (*See Exhibit 1 of Rich Presser's and Marcia Presser's Correspondence seeking administrative review of PL-23034*).

For the reason that this proceeding involves the Natural Resources Commission's (*Commission*) consideration of the appropriateness of the Department's issuance of PL-23034, which authorized construction and maintenance of a group pier at a location different than the historical location of EFAC's current group pier that is at issue in the Declaratory Relief Cause, the ALJ does not agree that simultaneous action in both proceedings presents the potential for the issuance of inconsistent judgments.

Potential Resolution of the Instant Proceeding through Outcome of the Declaratory Relief Cause
EFAC's motion also suggests that the outcome of the Declaratory Relief Action "will likely affect the necessity of the parties to continue to litigate this matter." During the prehearing conference conducted in this proceeding on October 17, 2017, EFAC, by counsel, represented only the *likelihood* that it would not proceed with construction activities authorized by PL-23034 if it was successful in preserving its ability to maintain a group pier in its historic location. Again, in its motion to stay this proceeding, EFAC makes no definitive statement that it will not proceed with the construction activities authorized by PL-23034 if it is allowed through the Declaratory Relief Cause to retain its current group pier at its historic location.


As long as PL-23034 remains valid, EFAC has the ability to proceed with the activities authorized. EFAC has not unequivocally committed that it will not act under the authority granted it by PL-23034 if it is successful in its effort to retain its group pier in the historic location. For this reason, the ALJ cannot conclude that the outcome of the Declaratory Relief Cause will contemporaneously resolve the matters at issue in this proceeding.

Impact on Evidentiary Matters

Without elaborating, EFAC maintains that the outcome of the Declaratory Relief Cause "will have significant bearing on the evidence presented in this matter." It is not clear to the ALJ how a decision issued by the Kosciusko Circuit Court in the Declaratory Relief Cause will impact the evidence necessary in a proceeding initiated to review the appropriateness of the Department's review leading to the issuance of PL-23034, which authorizes the construction and maintenance of a group pier at a location wholly different from the historical location of EFAC's group pier, when these issues do not appear to be involved in the Declaratory Relief Cause.

For all of the reasons stated herein, EFAC's motion to stay the instant proceeding is DENIED.

Dated: November 15, 2017



Sandra L. Jensen
Administrative Law Judge
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